

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

NEWMAN APARTMENTS CIELO
REVOCABLE TRUST

v.

COVINGTON SPECIALTY INSURANCE
COMPANY, AND ENGLE MARTIN &
ASSOCIATES INC.

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CIVIL ACTION NO. 17-cv-1046

JURY DEMANDED

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant Engle Martin & Associates, LLC¹ files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 as follows:

I. NATURE OF THE SUIT

1. This is an insurance coverage and bad faith lawsuit arising out of an insurance claim submitted by Plaintiff for alleged wind and hail damage to an apartment complex owned and/or operated by Plaintiff and insured by Defendant Covington Specialty Insurance Company, who has not been served. Plaintiff alleges generally that Defendants improperly investigated its insurance claim and wrongfully underpaid the claim. *See generally* Appendix, Exhibit B.

II. PROCEDURAL BACKGROUND

2. On August 31, 2017, Plaintiff filed an Original Petition initiating an action in the 170th Judicial District Court of McLennan County, Texas, bearing Cause No. 2017-2881-4 (“the State Court Action”). *See* Appendix, Exhibit B. No jury demand was made in the State Court Action. *See* Appendix, Exhibit B.

¹ Although correctly named as “Engle Martin & Associates, Inc.” at the time Plaintiff’s petition was filed, Engle Martin converted its corporate structure to a limited liability company (LLC) effective October 1, 2017.

3. Defendant was served with the Original Petition on October 30, 2017. *See* Appendix, Exhibit E.

4. This Notice of Removal is timely filed within the 30-day statutory time period for removal under 28 U.S.C. § 1446(b)(1), being filed within 30 days of service on Defendant.

5. This Notice of Removal is also timely filed within one year after commencement of the State Court Action, in compliance with 28 U.S.C. § 1446(c)(1).

III. BASIS FOR REMOVAL

6. This Court has original diversity jurisdiction under 28 U.S.C. § 1332 over this civil action, and the action may be removed by Defendant pursuant to 28 U.S.C. § 1441(b), as it is a civil action between citizens of different states, and the matter in controversy as to each underwriter exceeds the sum of \$75,000, exclusive of interest and costs.

7. According to Plaintiff's state court pleadings, Plaintiff alleges it is a citizen or inhabitant of Texas. *See* Appendix, Exhibit B at ¶ 2.

8. None of the Defendants are citizens of Texas. Defendant Engle Martin & Associates, LLC is incorporated in Georgia and has its principal place of business in Georgia. Defendant Covington Specialty Insurance Company is incorporated in New Hampshire and has its principal place of business in Georgia. Therefore, complete diversity of citizenship exists among the parties.

9. Plaintiff's Original Petition states that it seeks monetary relief "over \$1,000,000." *See* Appendix, Exhibit B at ¶ 77. Because the amount in controversy exceeds \$75,000 on the face of Plaintiff's pleading, this Court has subject-matter jurisdiction under 28 U.S.C. § 1332, and this removal is proper.

10. Removal to the Western District of Texas, Austin Division is proper because the state court action is pending in McLennan County, which is part of the Western District. A suit that is proper in one division of a federal district is proper in any division of that district.² Counsel for all parties have either their primary office or a local office in the Austin Division.

11. In compliance with 28 U.S.C. § 1446(a), Defendant also attaches to this Notice of Removal: (a) the state court docket sheet, (b) all service of process on Defendant, (c) all documents filed in the state court, and (d) all orders issued by the state court. *See* Appendix.

12. In compliance with 28 U.S.C. § 1446(d), Defendant hereby certifies that its counsel will promptly notify the clerk of the court in the State Court Action and all adverse parties of this removal.

13. Defendant is simultaneously filing a separately signed Corporate Disclosure/Certificate of Interested Parties which complies with FED. R. CIV. P. 7.1.

IV. CONCLUSION AND PRAYER

14. The basis for this removal and this Court's jurisdiction is diversity of citizenship under 28 U.S.C. §1332 because there is complete diversity among the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs. As such, this removal is proper under 28 U.S.C. §1441. On these grounds, Defendant hereby removes the referenced State Court Action to this Court.

15. Defendant demands a jury in this removed action.

16. THEREFORE, Defendant Engle Martin & Associates, LLC respectfully requests that the above-entitled action be removed from the 170th Judicial District Court of McLennan

² *United States v. Real Prop. Known As 200 Acres of Land Near FM 2686 Rio Grande City, Tex.*, 773 F.3d 654, 658 (5th Cir. 2014) (quoting *Says v. M/V DAVID C DEVALLE*, 161 F. Supp. 2d 752, 753 (S.D. Tex. 2001)). *See also Olivarez v. GEO Group, Inc.*, EP-14-CV-00436-FM, 2015 WL 13227823, at *3 (W.D. Tex. Feb. 12, 2015) (unpub. op.); *McPherson v. Leam Drilling Sys., LLC*, 2:14-CV-00113, 2014 WL 4063983, at *3 (S.D. Tex. Aug. 15, 2014) (unpub. op.).

County, Texas to the United States District Court for the Western District of Texas, Austin Division.

Respectfully submitted,

/s/ *Barrie J. Beer*

Barrie J. Beer

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Defendant's Notice of Removal** was served this 6th day of November, 2017 on the following counsel of record by the method specified:

Sean Bukowski THE BUKOWSKI LAW FIRM, PC 1601 Rio Grande, Ste. 300A Austin, Texas 78701	CMRRR: 70110110000170718850 And Email: sbukowski@bukowskilawfirm.com
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/s/ *Barrie J. Beer*

Barrie J. Beer